

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PENDLETON DIVISION

JAMES ANDREW CHEEVER,

Petitioner,

v.

No. 2:10-cv-01181-SU

MARK NOOTH,

Respondent.

ORDER

James Andrew Cheever
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Pro se

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Attorney General
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SIMON, District Judge.

On February 1, 2012 Magistrate Judge Patricia Sullivan filed Findings and

Recommendations in this case (doc. # 33). Judge Sullivan recommended that the Petition for Writ of Habeas Corpus be denied and a judgment of dismissal entered. Magistrate Judge Sullivan also recommended that a Certificate of Appealability not be issued. No objections have been filed.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Sullivan’s findings and recommendations for clear

error on the face of the record. No such error is apparent. Accordingly, the court ADOPTS Magistrate Judge Sullivan's Findings and Recommendation (doc. # 33).

The Petition for Writ of Habeas Corpus (doc. # 1) is DENIED. This case is dismissed with prejudice. The court declines to issue a Certificate of Appealability on the ground that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 3rd day of April, 2012.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge